

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BANK OF THE WEST,

Plaintiff,

- against -

M/V LADY LAZE, her engines, tackle, apparel,
appurtenances, etc., having Official No. 1148654
and Hull Serial No. SERP5770K203 *in rem*; and
PHILIPPE LAJAUNIE, *in personam*,

Defendants.

LONG ISLAND OFFICE

CASE NO.
CV-19 1543
IN ADMIRALTY

GARAUFIS, J.
SCANLON, M.J.

**COMPLAINT TO FORECLOSE A PREFERRED
SHIP'S MORTGAGE AND FOR DAMAGES**

The Complaint of BANK OF THE WEST against the M/V LADEY LAZE and her engines, tackle, apparel, etc. *in rem*, and PHILIPPE LAJAUNIE, *in personam* (hereinafter referred to as "Defendants"), in a cause of enforcement of a First Preferred Ship's Mortgage and of Contracts, civil and maritime, alleges upon information and belief:

1. This Court has jurisdiction of this matter, pursuant to 28 U.S.C. Section 1333 and 46 U.S.C. Section 31325.
2. This is an Admiralty and Maritime claim within the meaning of Fed. R. Civ. P. 9(h).

3. At all times relevant hereto, BANK OF THE WEST, was and still is a banking institution, organized and existing under the laws of the United States of America, with a principal place of business at 2527 Camino Ramon, San Ramon, California 94583.

4. At times relevant hereto, the Defendant M/V LADY LAZE, is and was a vessel documented under the laws of the United States in the name of PHILIPPE LAJAUNIE.

5. Upon information and belief, the Defendant vessel M/V LADY LAZE is currently berthed within the Eastern District of New York.

6. Upon information and belief, the Defendant PHILIPPE LAJAUNE is a resident of New York, New York, and is *sui juris*.

7. On or about March 18, 2006, the Individual Defendant purchased a certain 2003 Sea Ray 460 Sundancer, Hull Serial Number SERP5770K203, said vessel being named LADY LAZE and having Official No. 1148654 (hereinafter the "Vessel").

8. In connection with the aforesaid purchase, the Defendant executed a Retail Installment Contract and Security Agreement on March 18, 2006, wherein said party granted a security interest in and to the Vessel, her engines, tackle, appurtenances and the like to the lender Bank of the West. (A true and correct copy of the Retail Installment Contract and Security Agreement (the "Note") is attached hereto and incorporated herein as **EXHIBIT "A"**.)

9. In furtherance of the perfection of the security interest in and to the Vessel, a First Preferred Ship's Mortgage was executed by the Individual Defendants on March 18, 2006, and was recorded on or about June 1, 2006, at the National Vessel Documentation Center as Batch 496165, Document I.D. 5519772. (A true copy of the First Preferred Ship's Mortgage (the "Mortgage") is attached herein and incorporated herein as **EXHIBIT "B".**)

10. Plaintiff currently owns and holds the Note and Mortgage. The original principal amount of said Installment loan Note and Mortgage was Three Hundred Sixty-Two Thousand Nine Hundred Sixty-Nine and 91/100 Dollars (\$362,969.91), plus interest.

COUNT I

11. Plaintiff BANK OF THE WEST repeats and realleges each and every allegation contained in paragraphs "1" through "10", as if fully set forth at length herein.

12. The Defendant defaulted upon his obligations pursuant to the Note and Mortgage by failing to make the payments due on September 17, 2018, and thereafter.

13. Plaintiff, BANK OF THE WEST, has elected under the terms of the Note and Mortgage, to accelerate the remaining balance and to declare said amount due and payable in full due to the default.

14. Despite numerous demands for payment, no payment has been received.

15. All prerequisites to the maintenance of this action have been waived, performed or complied with.

16. The remaining principal balance and interest due the Plaintiff upon said obligation is \$197,347.15 as of November 23, 2018, together with interest currently accruing at the rate of \$34.21 per diem from November 23, 2018, and an amount due for attorneys' fees, reasonable court costs, and repossession and any and all other costs relating to this foreclosure action all pursuant to the Note and Mortgage.

17. Plaintiff is obligated to pay its attorneys, Taroff & Taitz, LLP, a reasonable fee.

WHEREFORE, judgment is demanded in favor of Plaintiff, BANK OF THE WEST against the Defendant Vessel, LADY LAZE, her engines, tackle, appurtenances, etc., for foreclosure of the Preferred Ship's Mortgage held by the Plaintiff against said Vessel; and further that said Vessel be sold as provided by law, free and clear of its liens and proceeds of said sale first applied to the costs of this action, costs of repossession and attorney's fees, and then to the principal and interest balance due, all according to the terms of the Note and Mortgage, as well as such other relief as may be just and appropriate under the circumstances.

COUNT II

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" as if fully set forth at length herein.

19. Pursuant to the terms of the Installment Note and Mortgage, the Defendant obligated himself to pay the sum of \$362,969.91, plus interest, for and on behalf of and as consideration for the purchase of the vessel, LADY LAZE, her engines, tackle, appurtenances, etc.

20. Certain payments due and owing to Plaintiff have not been made, therefore the full balance owing to BANK OF THE WEST thereon has been accelerated and declared due and owing by the Plaintiff pursuant to the terms and conditions of the Note and Mortgage.

21. All prerequisites to the maintenance of this action have been waived, performed or complied with.

22. The remaining principal balance and interest due the Plaintiff upon said obligation is \$197,347.15 as of November 23, 2018, together with interest currently accruing at the rate of \$34.21 per diem from November 23, 2018, reasonable attorneys' fees, court costs and any and all other costs relating to this foreclosure action and/or repossession all pursuant to the terms of the Note and Mortgage.

23. Plaintiff has retained the law firm of Taroff & Taitz, LLP, and is obligated to pay it reasonable attorneys' fees.

WHEREFORE, judgment is demanded in favor of the Plaintiff, Bank of the West, against the Individual Defendants for the sum of \$197,347.15, including interest through November 23, 2018; plus continuing interest, court costs, reasonable attorneys' fees, and any and all costs relating to the foreclosure and/or repossession and/or default on the Note and Mortgage, all pursuant to the terms of the Note and Mortgage, as well as any deficiency judgment, and any and all other relief that this Court deems just and appropriate under the circumstances.

Dated: Bohemia, New York
March 19, 2019

Yours, etc.

TAROFF & TAITZ, LLP
Attorneys for Plaintiff BANK OF THE WEST
One Corporate Drive, Suite 102
Bohemia, New York 11717
(631) 475-4400

By: _____
Steven Taitz

TO:

PHILIPPE LAJAUNIE
411 Park Avenue
Unit 3D
New York, NY 10022

UNITED STATES DISTRICT COURT
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BANK OF THE WEST,

CASE NO.

Plaintiff,

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IN ADMIRALTY

M/V LADY LAZE, her engines, tackle, apparel,
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and Hull Serial No. SERP5770K203 *in rem*; and
PHILIPPE LAJAUNIE, *in personam*,

VERIFICATION

Defendants.

State of California)
 : ss.
County of Contra Costa)

April Curtis, being duly sworn, deposes and says:

1. I am an Assistant Vice President of Bank of the West, the Plaintiff herein;
2. I have read the foregoing Complaint, know the contents thereof, and believe the same to be true to the best of my knowledge, information, and belief;
3. The sources of my information and the grounds of my belief are personal knowledge, the documents in my possession, and statements and records of the Plaintiff. I am authorized to act for the Plaintiff.



April Curtis

Sworn to before me this
____ day of February, 2019

Notary Public

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1–6 below)
 See Statement Below (Lines 1–6 to be completed only by document signer[s], not Notary)

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Contra Costa

Subscribed and sworn to (or affirmed) before me

on this 19 day of March, 2019,
by Date Month Year

(1) April Curtis

(and (2) _____),

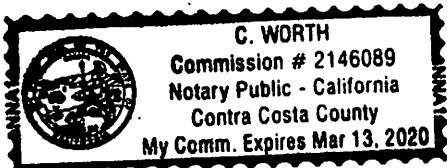
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature _____

Curtis

Signature of Notary Public



Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or
fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: affidavit (N4) Document Date: 3/19/19

Number of Pages: 2 Signer(s) Other Than Named Above: 0